

# Exhibit A

RECEIVED  
JUN 08 2010

BY:.....

) SUPERIOR COURT OF NEW JERSEY  
) LAW DIVISION: ESSEX COUNTY  
) DOCKET NO: ESX-L-3577-10

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**ATLANTIC COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division, Direct Filing  
1201 Bacharach Blvd., First Fl.  
Atlantic City, NJ 08401  
LAWYER REFERRAL (609) 345-3444  
LEGAL SERVICES (609) 348-4200

**BERGEN COUNTY:**

Deputy Clerk of the Superior Court  
Case Processing Section, Rm. 119  
Justice Center, 10 Main St.  
Hackensack, NJ 07601-0769  
LAWYER REFERRAL (201) 488-0044  
LEGAL SERVICES (201) 487-2166

**BURLINGTON COUNTY:**

Deputy Clerk of the Superior Court  
Central Processing Office  
Attn: Judicial Intake  
First Fl., Courts Facility  
49 Rancocas Rd.  
Mt. Holly, NJ 08060  
LAWYER REFERRAL (609) 261-4862  
LEGAL SERVICES (609) 261-1088

**CAMDEN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Processing Office  
1st Fl., Hall of Records  
101 S. Fifth St.  
Camden, NJ 08103  
LAWYER REFERRAL (856) 964-4520  
LEGAL SERVICES (856) 964-2010

**CAPE MAY COUNTY:**

Deputy Clerk of the Superior Court  
Central Processing Office  
9 N. Main Street  
Box DN-209  
Cape May Court House, NJ 08210  
LAWYER REFERRAL (609) 463-0313  
LEGAL SERVICES (609) 465-3001

**CUMBERLAND COUNTY:**

Deputy Clerk of the Superior Court  
Civil Case Management Office  
Broad & Fayette Sts., P.O. Box 615  
Bridgeton, NJ 08302  
LAWYER REFERRAL (856) 692-6207  
LEGAL SERVICES (856) 451-0003

**MERCER COUNTY:**

Deputy Clerk of the Superior Court  
Local Filing Office, Courthouse  
175 South Broad St., P.O. Box 8068  
Trenton, NJ 08650  
LAWYER REFERRAL (609) 585-6200  
LEGAL SERVICES (609) 695-6249

**MIDDLESEX COUNTY:**

Deputy Clerk of the Superior Court  
Administration Building, 3rd Floor  
1 Kennedy Sq., P.O. Box 2633  
New Brunswick, NJ 08903-2633  
LAWYER REFERRAL (732) 828-0053  
LEGAL SERVICES (732) 249-7600

**MONMOUTH COUNTY:**

Deputy Clerk of the Superior Court  
71 Monument Park  
P.O. Box 1269  
Freehold, NJ 07728-1262  
LAWYER REFERRAL (732) 431-5544  
LEGAL SERVICES (732) 866-0020

**MORRIS COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
30 Schuyler Pl., P.O. Box 910  
Morristown, NJ 07960-0910  
LAWYER REFERRAL (973) 267-5882  
LEGAL SERVICES (973) 285-6911

**OCEAN COUNTY:**

Deputy Clerk of the Superior Court  
Court House, Room 119  
118 Washington Street  
Toms River, NJ 08754  
LAWYER REFERRAL (732) 240-3666  
LEGAL SERVICES (732) 341-2727

**PASSAIC COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
77 Hamilton St.  
Paterson, NJ 07505  
LAWYER REFERRAL (973) 278-9223  
LEGAL SERVICES (973) 345-7171

**SALEM COUNTY:**

Deputy Clerk of the Superior Court  
92 Market St., P.O. Box 18  
Salem, NJ 08079  
LAWYER REFERRAL (856) 935-5628  
LEGAL SERVICES (856) 451-0003



## ESSEX COUNTY:

Deputy Clerk of the Superior Court  
50 West Market Street  
Room 131  
Newark, NJ 07102  
LAWYER REFERRAL (973) 622-6207  
LEGAL SERVICES (973) 624-4500

## GLOUCESTER COUNTY:

Deputy Clerk of the Superior Court  
Civil Case Management Office  
Attn: Intake, First Fl., Court House  
1 North Broad St., P.O. Box 129  
Woodbury, NJ 08096  
LAWYER REFERRAL (856) 848-4589  
LEGAL SERVICES (856) 848-5360

## HUDSON COUNTY:

Deputy Clerk of the Superior Court  
Superior Court, Civil Records Dept.  
583 Newark Avenue  
Jersey City, NJ 07306  
LAWYERS REFERRAL (201) 798-2727  
LEGAL SERVICES (201) 792-6363

## HUNTERDON COUNTY:

Deputy Clerk of the Superior Court  
Civil Division  
65 Park Avenue  
Flemington, NJ 08862  
LAWYER REFERRAL (908) 735-2611  
LEGAL SERVICES (908) 782-7979

## SOMERSET COUNTY:

Deputy Clerk of the Superior Court  
Civil Division Office  
New Court House, 3<sup>rd</sup> Floor  
P.O. Box 3000  
Somerville, NJ 08876  
LAWYER REFERRAL (908) 685-2323  
LEGAL SERVICES (908) 231-0840

## SUSSEX COUNTY:

Deputy Clerk of the Superior Court  
Sussex County Judicial Center  
43-47 High Street  
Newton, NJ 07860  
LAWYER REFERRAL (973) 267-5882  
LEGAL SERVICES (973) 383-7400


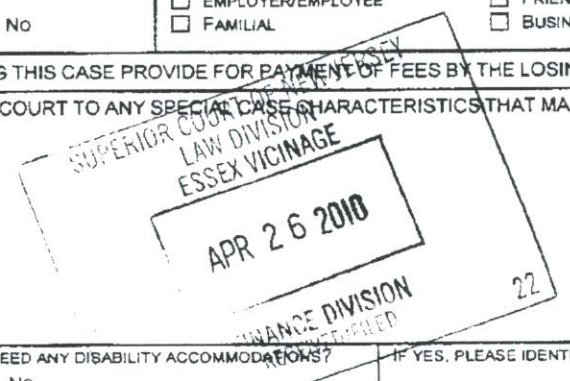
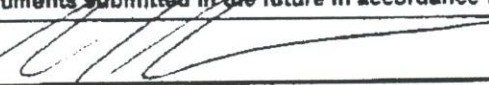
## UNION COUNTY:

Deputy Clerk of the Superior Court  
1<sup>st</sup> Fl., Court House  
2 Broad Street  
Elizabeth, NJ 07207-6073  
LAWYER REFERRAL (908) 353-4715  
LEGAL SERVICES (908) 354-4340

## WARREN COUNTY:

Deputy Clerk of the Superior Court  
Civil Division Office  
Court House  
Belvidere, NJ 07823-1500  
LAWYER REFERRAL (973) 267-5882  
LEGAL SERVICES (973) 475-2010

Appendix XII-B1

| CIVIL CASE INFORMATION STATEMENT<br>(CIS)  |  | FOR USE BY CLERK'S OFFICE ONLY  |                          |
|--|--|---|--------------------------|
|  <p>Use for initial Law Division<br/>Civil Part pleadings (not motions) under <i>Rule 4:5-1</i><br/><b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>,<br/>if information above the black bar is not completed<br/>or attorney's signature is not affixed</b></p> |  | PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA |                          |
|  |  | CHG/CK NO.  |                          |
|  |  | AMOUNT:   |                          |
|  |  | OVERPAYMENT:  |                          |
| BATCH NUMBER:  |  |   |                          |
| ATTORNEY / PRO SE NAME<br>Robert M. Anderson, Esq.   |  | TELEPHONE NUMBER<br>(732) 663-1920  | COUNTY OF VENUE<br>Essex |
| FIRM NAME (if applicable)<br>Escandon, Fernicola, Anderson & Covelli   |  | DOCKET NUMBER (when available)<br>ESX-L 357710  |                          |
| OFFICE ADDRESS<br>301 Main Street<br>P.O. Box 211<br>Allenhurst, New Jersey 07711  |  | DOCUMENT TYPE<br>Complaint  |                          |
|  |  | JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                   |                          |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>Kathleen O'Neill and Michael Harrington, Plaintiffs   | CAPTION<br>Kathleen O'Neill and Michael Harrington v. James C. Totten, DPM;<br>Patricia Berran, DPM; Claudio Gomez, DPM; individually and/or as<br>agents, servants and/or employees of Saint Barnabas, etal   |   |                          |
| CASE TYPE NUMBER (See reverse side for listing)<br>604   | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW<br>REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |   |                          |
| RELATED CASES PENDING?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  | IF YES, LIST DOCKET NUMBERS  |   |                          |
| DO YOU ANTICIPATE ADDING ANY PARTIES<br>(arising out of same transaction or occurrence)?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br><input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN  |   |                          |
| <b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>   |  |   |                          |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION  |  |   |                          |
| DO PARTIES HAVE A CURRENT, PAST OR<br>RECURRENT RELATIONSHIP?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   | IF YES, IS THAT RELATIONSHIP:<br><input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS                   |   |                          |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  |   |                          |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR<br>ACCELERATED DISPOSITION<br>Unknown at this time   |  |   |                          |
|    |  |   |                          |
| DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION  |   |                          |
| WILL AN INTERPRETER BE NEEDED?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  | IF YES, FOR WHAT LANGUAGE?   |   |                          |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be<br>redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .   |  |   |                          |
| ATTORNEY SIGNATURE:   |  |   |                          |



Side 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 999 OTHER (Briefly describe nature of action)

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 699 TORT - OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

**Mass Tort (Track IV)**

- |                                       |  |
|---------------------------------------|--|
| 248 CIBA GEIGY                        | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX                            |
| 271 ACCUTANE                          | 283 DIGITEX                            |
| 272 BEXTRA/CELEBREX                   | 284 NUVARING                           |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 286 LEVAQUIN                           |
| 275 ORTHO EVRA                        | 287 YAZ/YASMIN/OCELLA                  |
| 277 MAHWAH TOXIC DUMP SITE            | 801 ASBESTOS                           |
| 278 ZOMETA/AREDIA                     | 619 VIOXX                              |
| 279 GADOLINIUM                        |  |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Verbal Threshold☐ Putative Class Action☐ Title 59

OUR FILE NO.: 10599  
 ESCANDON, FERNICOLA, ANDERSON & COVELLI  
 301 Main Street  
 P.O. Box 211  
 Allenhurst, New Jersey 07711  
 (732) 663-1920  
 Attorneys for Plaintiff

APR 26 2010

RECEIVED

KATHLEEN O'NEILL and MICHAEL  
 HARRINGTON, her husband,

Plaintiff,

V.

JAMES C. TOTTEN, DPM, PATRICIA  
 BERRAN, DPM, CLAUDIO GOMEZ,  
 DPM, individually and/or as agents,  
 servants and/or employees of SAINT  
 BARNABAS AMBULATORY CARE  
 CENTER, ; GRAMEDICA, LLC; and/or  
 GRAMEDICA FOOT CARE  
 SOLUTIONS; DRS. JOHN and/or JANE  
 DOES (1-5), ABC MEDICAL  
 GROUP(S), ABC CORPS (1-5) and/or  
 ASSOCIATES (1-5) (all fictitious names)

Defendants

SUPERIOR COURT OF NEW JERSEY  
 LAW DIVISION: ESSEX COUNTY

DOCKET NO: ESX-L

3577-10

Civil Action

COMPLAINT

ESSEX VICINAGE  
 APR 26 2010

FINANCE DIVISION  
 RECEIVED/FILED

Plaintiffs, KATHLEEN O'NEILL and MICHAEL HARRINGTON,  
 residing at 103 Potomac Drive, in the Town of Basking Ridge, County of  
 Somerset and State of New Jersey complaining of the defendants, allege and  
 say:

### FACTS COMMON TO ALL COUNTS

1. The plaintiff, Kathleen O'Neill, was a patient of James C. Totten, DPM at all times relevant to this action through June 2, 2008.
2. Plaintiff was a patient of Patricia Berran, DPM beginning

September 2007 through December 4, 2008.

3. On December 7, 2007, Dr. Totten performed surgery utilizing the HyProCure Sinus Tarsi Implant developed, designed, manufactured and sold by Gamedica, LLC and/or Foot Care Solutions. Dr. Totten, was assisted by Patricia Berran, DPM and Claudio Gomez, DPM during which the HyProCure Sinus Tarsi Implant was inserted into plaintiff's left ankle.

4. On April 25, 2008, a second surgery was performed to remove the HyProCure Sinus Tarsi Implant.

5. On or about June 2, 2008, during a routine visit with James C. Totten, DPM, the doctor indicated to the plaintiff that the HyProCure Sinus Tarsi Implant which was inserted in her left ankle had sited requiring the April 25, 2008 surgery to remove the implant.

6. On or about August 7, 2009, plaintiff was made aware that there was not an orthopedic doctor in all of New Jersey that would have put this device in her ankle.

#### **FIRST COUNT**

1. At all times herein mentioned, plaintiff KATHLEEN O'NEILL, was a patient of defendants herein jointly and/or severally, for care and/or treatment.

2. At all times mentioned, defendants, JAMES C. TOTTEN, DPM, PATRICIA BETTAN, DPM, CLAUDIO GOMEZ, DPM, individually and/or as agents, servants and/or employees of SAINT BARNABAS AMBULATORY CARE CENTER; JOHN and/or JANE DOES, M.D.'S (1-5); ABC MEDICAL GROUP(S); ABC



CORPS (1-5) and/or ASSOCIATES (1-5) (all fictitious names) located at 200 South Orange Avenue, Township of Livingston, County of Essex, State of New Jersey.

3. Defendants herein jointly and/or severally, owed the plaintiff a duty to exercise a degree of diligence and skill required of the average health care provider, medical facility and/or practitioner of his or her respective specialty in his or her particular locale.

4. The defendants breached a duty of care which the defendants owed the plaintiff due to the negligence of the defendants. The defendants were negligent, jointly and severally due to the fact that defendants deviated from the applicable standard of care during their care of plaintiff.

5. As a direct and proximate result of the negligence and deviation of the defendants, plaintiff was and will in the future be caused to incur much pain and suffering, mental anguish, economic loss, had to expend sums for medical expenses and is forever prevented from attending to her normal activities, however limited.

WHEREFORE, plaintiff herein hereby demands judgment against the defendants aforesaid, their agents, servants and/or employees, jointly and/or severally, for compensatory damages, punitive damages, together with interest, costs of suit and counsel fees.

#### SECOND COUNT

Plaintiff repeats, reiterates and realleges each and every paragraph of the First Count herein and makes the same a part hereof by reference thereto.

1. At all times herein mentioned, the defendants, GRAMEDICA, LLC and/or GRAMEDICA FOOT CARE SOLUTIONS knew or had reason to know of the intended use of said HyProCure Sinus Tarsi Implant and expressly and impliedly represented by warranty that said HyProCure Sinus Tarsi Implant which the defendants designed, manufactured, inspected, assembled, installed, tested, leased, rented, sold and/or distributed would be reasonably fit for the purpose in which it was intended to be used, and that said HyProCure Sinus Tarsi Implant was of a merchantable quality and free from defects of design and/or manufacture or other defects, faults or shortcomings.

2. The defendants, breached said expressed and implied warranties given to the plaintiff and other similarly in the possession of said HyProCure Sinus Tarsi Implant was designed, manufactured, assembled, inspected, installed, maintained, tested, leased, rented, sold and/or distributed in a defective, dangerous, unsafe, unsound, unsuitable and unworkmanlike condition, and was further unfit for the purpose intended because it failed to contain adequate warnings or instructions and was not of merchantable quality.

3. As a direct and proximate result of the defendants' breach of expressed and implied warranties, as aforesaid, either jointly, severally, or in the alternative, the plaintiff, Kathleen O'Neill, has suffered serious and permanent personal injuries; she has suffered and will in the future suffer great pain; she has been and will in the future be forced to expend large sums of money for medical care and attention; she has lost and will in the future

lose large sums of money for wages; and she has been and will in the future be unable to pursue her normal daily activities as before.

WHEREFORE, Plaintiff demands judgment against the defendants, on this count, either jointly, severally, or in the alternative, for damages, together with interest and costs of suit, and counsel fees.

### THIRD COUNT

Plaintiff repeats, reiterates and realleges each and every paragraph of the First through Second Counts herein and makes the same a part hereof by reference thereto.

1. On or before the aforementioned time and place, said defendants, GRAMEDICA, LLC. and/or GRAMEDICA FOOT CARE SOLUTIONS manufactured, designed, sold a HyProCure Sinus Tarsi Implant not reasonably, fit, suitable or safe for its intended purpose because it deviated from the design specifications, formula, or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae; or failed to contain adequate warnings, instructions; or was designed in a defective manner, as a result of which the plaintiff, Kathleen O'Neill, was caused to sustain injury to be in violation of the State of New Jersey's Laws of Product Liability.

2. As a direct and proximate result of the negligence of the defendants either jointly, severally, or in the alternative, as aforesaid, the plaintiff, Kathleen O'Neill, has suffered serious and permanent personal injuries; she has suffered and will in the future suffer great pain; she has lost



and will in the future be forced to expend large sums of money for medical care and attention; she has lost and will in the future lose large sums of money for wages; and she has been and will in the future be unable to pursue her normal daily activities as before.

WHEREFORE, Plaintiffs demand judgment against the defendants on this count, either jointly, severally, or in the alternative, for damages, together with interest and costs of suit, and counsel fees.

#### **FOURTH COUNT**

Plaintiffs herein repeat, reiterate and reallege each and every allegation contained in the First through Third Counts as if set forth at length herein.

1. Plaintiff, MICHAEL HARRINGTON was and is the husband of plaintiff, KATHLEEN O'NEILL.

2. By reason of the aforesaid, plaintiff MICHAEL HARRINGTON has been, and will in the future be, deprived of the comfort, companionship and society of his wife, KATHLEEN O'NEILL.

WHEREFORE, plaintiff MICHAEL HARRINGTON, hereby demands judgment against the defendants aforesaid, jointly and/or severally, for compensatory damages, punitive damages, together with interest, costs of suit and counsel fees.

#### **NOTICE OF OTHER ACTIONS**

Pursuant to R. 4:5-1, I certify that the matter in controversy is not the subject of any other action in any court or of a pending arbitration proceeding and, to the best of my knowledge, none is contemplated at this time. I further certify

that, to the best of my knowledge and belief, there are no other parties who should be joined in this action.

**DEMAND FOR INSURANCE DISCOVERY**

Pursuant to R 4:10-2(b) demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

**NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17-4(c)**

PLEASE TAKE NOTICE that the undersigned attorneys do hereby demand, pursuant to the above-cited Rules of Court, that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories and all documents, papers and other materials referred to therein, received from any party, upon the undersigned attorneys and, further, TAKE NOTICE that this is a CONTINUING demand.

**DEMAND FOR INTERROGATORIES**

Plaintiff hereby demands of each Defendant certified answers to FORM C and C-3 Interrogatories within the time prescribed by the Rules of Court.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the undersigned is hereby designated as trial counsel.

**JURY DEMAND**

Plaintiff herein hereby demands a trial by jury as to all issues.

ESCANDON, FERNICOLA, ANDERSON & COVELLI  
Attorneys for Plaintiff

By: \_\_\_\_\_  
ROBERT M. ANDERSON



Dated: April 16, 2010



# EXHIBIT B

## Appendix XII-B1

JUL 29 2011

|  |   |   |  |                          |  |
|--|---|---|--|--------------------------|--|
|   | <b>CIVIL CASE INFORMATION STATEMENT<br/>(CIS)</b>   |   | <b>FOR USE BY CLERK'S OFFICE ONLY</b>  |                          |  |
|  | Use for initial Law Division<br>Civil Part pleadings (not motions) under <i>Rule 4:5-1</i><br><b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>,<br/>         if information above the black bar is not completed<br/>         or attorney's signature is not affixed</b> |   | PAYMENT + LABOR COURT FEE <input type="checkbox"/> CA<br>CHG/CK ESSEX VICINAGE |                          |  |
|  |   |   | AMOUNT: JUL 22 P 3:51  |                          |  |
|  |   |   | OVERPAYMENT: <input type="checkbox"/><br>RECEIVED/FILED<br>BATCH NUMBER: 35    |                          |  |
| ATTORNEY/PRO SE NAME<br>William D. Sanders, Esq.   |   | TELEPHONE NUMBER<br>(973) 822-1110  |  | COUNTY OF VENUE<br>Essex |  |
| FIRM NAME (if applicable)<br>McGivney & Kluger, P.C.   |   | DOCKET NUMBER (when available)<br>ESX-L-3677-10   |  |                          |  |
| OFFICE ADDRESS<br>23 Vreeland Road, Suite 220<br>Florham Park, NJ 07932  |   | DOCUMENT TYPE<br>Answer & Crossclaim  |  |                          |  |
|  |   | JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |  |                          |  |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>Graham Medical Technologies LLC<br>d/b/a GraMedica Inc., etc.   |   | CAPTION<br>Kathleen O'Neill & Michael Harrington v James C. Totten, DPM, et al.   |  |                          |  |
| CASE TYPE NUMBER (See reverse side for listing)<br>606, 604  |   | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW<br>REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |  |                          |  |
| RELATED CASES PENDING?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   | IF YES, LIST DOCKET NUMBERS   |  |                          |  |
| DO YOU ANTICIPATE ADDING ANY PARTIES<br>(arising out of same transaction or occurrence)?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br><input checked="" type="checkbox"/> NONE<br><input type="checkbox"/> UNKNOWN  |  |                          |  |
| <b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>   |   |   |  |                          |  |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION  |   |   |  |                          |  |
| DO PARTIES HAVE A CURRENT, PAST OR<br>RECURRENT RELATIONSHIP?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   | IF YES, IS THAT RELATIONSHIP:<br><input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS                    |  |                          |  |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   |   |  |                          |  |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR<br>ACCELERATED DISPOSITION   |   |   |  |                          |  |
|  Do you or your client need any disability accommodations?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No         |   | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION   |  |                          |  |
| Will an interpreter be needed?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   | IF YES, FOR WHAT LANGUAGE?  |  |                          |  |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be<br>redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> . |   |   |  |                          |  |
| ATTORNEY SIGNATURE: <i>William D. Sanders</i> 7/21/10  |   |   |  |                          |  |

Side 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

**Mass Tort (Track IV)**

- |                                       |  |
|---------------------------------------|--|
| 248 CIBA GEIGY                        | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX                            |
| 271 ACCUTANE                          | 283 DIGITEK                            |
| 272 BEXTRA/CELEBREX                   | 284 NUVARING                           |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 286 LEVAQUIN                           |
| 275 ORTHO EVRA                        | 287 YAZ/YASMIN/OCELLA                  |
| 277 MAHWAH TOXIC DUMP SITE            | 601 ASBESTOS                           |
| 278 ZOMETA/AREXIA                     | 619 VIOXX                              |
| 279 GADOLINIUM                        |  |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Verbal Threshold☐ Putative Class Action☐ Title 59



**MCGIVNEY & KLUGER, P.C.**

23 Vreeland Road, Suite 220

Florham Park, NJ 07932

973-882-1110

Attorneys for Defendant, Graham Medical  
Technologies, L.L.C. d/b/a GraMedica, Inc.  
i/p/a Gamedica, LLC and/or Gamedica  
Foot Care Solutions

SUPERIOR COURT OF NJ  
CIVIL DIVISION  
ESSEX VICINAGE

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FINANCE DIVISION  
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|  |   |
|--|---|
| <p>KATHLEEN O'NEILL and MICHAEL HARRINGTON,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">-vs-</p> <p>JAMES C. TOTTEN, DPM, PATRICIA BERRAN, DPM, CLAUDIO GOMEZ, DPM, individually and/or as agents, servants and/or employees of SAINT BARNABAS AMBULATORY CARE CENTER, GRAMEDICA, LLC and/or GRAMEDICA FOOT CARE SOLUTIONS, DRS. JOHN and/or JANE DOES (1-5), ABC MEDICAL GROUPS, ABC CORPS. (1-5), and/or ASSOCIATES (1-5) (all fictitious names),</p> <p style="text-align: center;">Defendants.</p> | <p>SUPERIOR COURT OF NEW JERSEY<br/>LAW DIVISION – ESSEX COUNTY<br/>DOCKET NO. ESX-L-3577-10</p> <p style="text-align: center;"><b>Civil Action</b></p> <p>GRAHAM MEDICAL TECHNOLOGY'S<br/>ANSWER, CROSSCLAIM FOR<br/>CONTRIBUTION AND INDEMNIFICATION,<br/>JURY DEMAND, REQUEST FOR<br/>STATEMENT OF DAMAGES, DEMAND<br/>FOR INTERROGATORY ANSWERS, TRIAL<br/>ATTORNEY DESIGNATION, AND<br/>CERTIFICATION PURSUANT TO RULE<br/>4:5-1</p> |
|--|---|

Defendant, Graham Medical Technologies, L.L.C., d/b/a GraMedica, Inc. ("Graham"), a limited liability company of the State of Michigan, improperly pleaded herein as "Gamedica, LLC and/or Gamedica Foot Care Solutions," by and through its attorneys, McGivney & Kluger, P.C., answers the Complaint of the plaintiffs and states as follows:

**FACTS COMMON TO ALL COUNTS**

1. Graham is without sufficient knowledge or information to form a belief as to the truth of falsity of the allegations of Paragraph 1 of the Complaint and leaves plaintiffs to their proofs regarding them.

2. Graham is without sufficient knowledge or information to form a belief as to the truth of falsity of the allegations of Paragraph 2 of the Complaint and leaves plaintiffs to their proofs regarding them.

3. Graham is without sufficient knowledge or information to form a belief as to the truth of falsity of the allegations of Paragraph 3 of the Complaint regarding the performance of surgery alleged therein and leaves plaintiffs to their proofs regarding them, except that Graham denies generally that the HyProCure Subtalar Implant System is intended for insertion into the ankle. Graham admits that it lawfully manufactures and sells the HyProCure Subtalar Implant System pursuant to applicable regulatory approval.

4. Graham is without sufficient knowledge or information to form a belief as to the truth of falsity of the allegations of Paragraph 4 of the Complaint and leaves plaintiffs to their proofs regarding them.

5. Graham is without sufficient knowledge or information to form a belief as to the truth of falsity of the allegations of Paragraph 5 of the Complaint and leaves plaintiffs to their proofs regarding them, except that it denies generally that the HyProCure Subtalar Implant System was intended to be inserted into the ankle.

6. Graham is without sufficient knowledge or information to form a belief as to the truth of falsity of the allegations of Paragraph 6 of the Complaint and leaves plaintiffs to their proofs regarding them, except that it denies generally that the HyProCure Subtalar Implant System was intended to be inserted into the ankle.

#### **FIRST COUNT**

1. The allegations of Paragraph 1 of the First Count of the Complaint are not directed to Graham and therefore it makes no response to them.

2. The allegations of Paragraph 2 of the First Count of the Complaint are not directed to Graham and therefore it makes no response to them.

3. The allegations of Paragraph 3 of the First Count of the Complaint refer to “defendants” generally, but in a manner that does not logically concern Graham because it is not a “health care provider, medical facility and/or practitioner of his or her respective specialty in his or her particular locale” as identified therein. Graham admits that other defendants in this action who are “health care providers, medical facilities and/or practitioners of his or her respective specialty in his or her particular locales” owed duties to the plaintiff. Graham is without sufficient knowledge or information to form a belief as to the truth or falsity of those allegations and leaves plaintiffs to their proofs regarding them. While it would appear that those allegations are not properly directed to Graham, to the extent that plaintiffs contend otherwise, they are denied.

4. The allegations of Paragraph 4 of the First Count of the Complaint refer to “defendants” generally, but in a manner that does appear to concern Graham because it refers implicitly to the allegations of the preceding Paragraph and Graham incorporates herein its response thereto. While it would appear that these allegations are not properly directed to Graham, to the extent that plaintiffs contend otherwise, they are denied.

### **SECOND COUNT**

Graham repeats and realleges each of its responses to the previous allegations of the Complaint as if set forth at length herein.

1. Graham denies the allegations of Paragraph 1 of the Second Count of the Complaint to the extent they allege, by virtue of the incorporation of the previous allegations of the Complaint, that the “purpose” of the HyProCure Subtalar Implant System includes use as an



“ankle” implant. Graham admits the HyProCure Subtalar Implant System was intended to, among other things, treat instability of the subtalar joint complex. To the extent that the allegations of this Paragraph that the HyProCure Subtalar Implant System was “designed, manufactured, inspected, assembled or tested, sold and/or distributed” so that it was “reasonably fit for the purpose in which it was intended to be used” as an ankle implant, and further that it “was of a merchantable quality and free from defects of design and/or manufacture or other defects, faults or shortcomings” as an ankle implant, they are denied. Graham denies the remaining allegations of this Paragraph.

2. To the extent the allegations of Paragraph 2 of the Second Count of the Complaint are directed to Graham, they are denied.

3. To the extent the allegations of Paragraph 3 of the Second Count of the Complaint are directed to Graham, they are denied.

### **THIRD COUNT**

Graham repeats and realleges each of its responses to the previous allegations of the Complaint as if set forth at length herein.

1. To the extent the allegations of Paragraph 1 of the Third Count of the Complaint are directed to Graham, they are denied.

2. To the extent the allegations of Paragraph 2 of the Third Count of the Complaint are directed to Graham, they are denied.

### **FOURTH COUNT**

Graham repeats and realleges each of its responses to the previous allegations of the Complaint as if set forth at length herein.

1. Graham is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Fourth Count of the Complaint and leaves plaintiffs to their proofs regarding them.

2. To the extent the allegations of Paragraph 2 of the Fourth Count of the Complaint are directed to Graham, they are denied.

#### **AFFIRMATIVE DEFENSES**

1. Any and all damages sustained by plaintiffs were the result of their own acts or omissions and/or the acts or omissions of a third party or third parties over whom Graham had neither control nor a right of control.

2. Plaintiffs are barred from recovery, in whole or in part, because of the contributory and/or comparative negligence of Kathleen O'Neill pursuant to the Comparative Negligence Act, N.J.S.A. 2A:15-1 et seq.

3. Plaintiffs have failed to include and join in this action all identifiable and indispensable parties without whom in equity and fairness this action should not proceed and this action should be dismissed to the extent such parties cannot be joined.

4. Plaintiffs has been unable to identify Graham as the party causing her any of their alleged injuries, and therefore all plaintiffs herein fail to state a claim upon which relief can be granted against Graham.

5. Plaintiffs are barred from recovery, in whole or in part, because Kathleen O'Neill undertook to use (or have implanted) the product at issue with knowledge of the risks of utilizing it and assumed the risk(s) thereof.

6. Any injury that plaintiffs may have suffered was the result of acts or omissions that superseded or intervened to overcome any alleged acts or omissions of Graham.

7. To the extent that the laws of various States may provide the rule of decision for the claims of the plaintiffs herein, Graham alleges all defenses that are available to it pursuant thereto.

8. Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.

9. The delay of the plaintiffs in commencing suit against Graham is inexcusable and Graham has suffered prejudice thereby, and the respective plaintiffs' claims are barred by laches.

10. Plaintiffs have knowingly and intelligently waived their rights and the Complaint is barred to that extent.

11. The Complaint fails to state, in whole or in part, a claim upon which relief may be granted.

12. At all relevant times, Graham acted in conformity with the state-of-the-art and in conformity with generally recognized and prevailing standards.

13. Graham denies that there existed any warranties, either expressed or implied, between it and Kathleen O'Neill. Even if such warranties existed, plaintiffs' claims for breach of warranty are barred by their failure to comply with notice provisions required by the Uniform Commercial Code or applicable law.

14. Neither plaintiff relied on any statement, representation or warranty by or from Graham.

15. Kathleen O'Neill chose to have a surgical procedure wherein the HyProCure Subtalar Implant System was used on the recommendation of her physician and while Graham denies any damages resulted therefrom, any damages plaintiffs' claim resulted from that decision and not from any action of Graham.

16. Should Graham be held liable to the plaintiffs, which liability is specifically denied, Graham would be entitled to a set-off for the total of all amounts paid to the plaintiffs from all collateral sources.

17. To the extent one or more of the plaintiffs have settled, and/or released any party to this action, then Graham's liability shall be reduced thereby under applicable law.

18. Recovery of any alleged damages by any plaintiff against Graham is limited by the doctrine of avoidable consequences.

19. Plaintiffs have failed to take reasonable steps to mitigate their damages and, to that extent, they are barred from recovery.

20. To the extent any plaintiff has taken steps to mitigate their damages which were unreasonable or inadequate, any recovery to such plaintiff is reduced thereby.

21. Graham demands that any claims for punitive damages should be bifurcated from plaintiffs' case-in-chief and be the subject of a separate trial.

22. The injuries complained-of were caused by the unforeseeable misuse or alteration of the HyProCure Subtalar Implant System after it left Graham's control.

23. Plaintiffs' Complaint is barred to the extent plaintiff seek the imposition of liability against Graham based upon any action of Graham that was taken in accordance with applicable federal statutes or regulations.

29. If in fact Kathleen O'Neill had surgery wherein the HyProCure Subtalar Implant System was placed in her "ankle," the Implant was used for a purpose and in a manner not intended or recommended by Graham and over which Graham had no control.

30. Plaintiffs' claims are subject to the limitations and defenses of N.J.S.A. 2A:58C-1, *et seq.*, the New Jersey Products Liability Act.



31. To the extent permitted by law, Graham is entitled to contribution from any person and/or entity whose negligence or other fault contributed to plaintiffs' alleged injuries and damages.

32. Plaintiff's Complaint against Graham is frivolous pursuant to N.J.S.A. 2A:15-59.1 and R. 1:4-8 to the extent that plaintiffs lack a good-faith basis for believing that any damages they suffered were caused by a defect in the design, manufacture or warnings of the HyProCure Subtalar Implant System, or any breach of warranty by Graham concerning that product. Plaintiff has sued Graham merely on the theory that because she believes she was injured following the implant procedure, and from which a second procedure was allegedly required, that either the HyProCure Subtalar Implant System itself, or the physicians who implanted it, must be at fault.

33. Graham claims all available defenses to plaintiffs' claims for punitive damages pursuant to the New Jersey Punitive Damages Act.

34. Graham reserves the right to amend its Answer and adopt additional defenses which have been or will be alleged by other defendants in this action. In addition, Graham will rely upon additional defenses which become available or appear during discovery proceedings in this action, and hereby specifically reserves the right to amend its Answer for the purposes of asserting any such additional defenses.

35. Plaintiff's action is barred by the doctrine of estoppel.

36. Graham is not liable for more than its proper percentage of any award as set forth in N.J.S.A. 2A:15-5.1, et seq.

WHEREFORE, Graham demands judgment dismissing plaintiffs' Complaint with prejudice, the expense of defense and costs of suit, including attorney's fees, and for such other relief as this Court may deem appropriate.

**CROSSCLAIM FOR CONTRIBUTION**

Graham hereby makes claim for contribution against each and every defendant who may appear in this action pursuant to N.J.S.A. 2A:53A-1, *et seq.*

**CROSSCLAIM FOR INDEMNIFICATION**

While denying any liability to plaintiffs as well as the damages and injuries alleged, if Graham is found liable to the plaintiff for damages by reason of the alleged acts complained of, this defendant's alleged negligence was merely constructive, technical, passive or vicarious, and plaintiff(s) damages and injuries arose with direct and primary negligence, strict liability, breach of contract and implied warranties of the said co-defendants listed any action as part of this litigation.

**DEMAND FOR ANSWERS TO INTERROGATORIES**

Graham hereby requests the plaintiffs herein to provide responsive, certified Answers to Interrogatories set forth in Forms A, A(1) and A(2) prescribed by the New Jersey Supreme Court.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, William D. Sanders, Esq. is hereby designated as trial counsel in the above-captioned matter.

**DEMAND FOR STATEMENT OF DAMAGES PURSUANT TO RULE 4:5-2**

Demand is hereby made upon plaintiffs that within 5 days after service hereof they shall furnish Graham with a written statement of the amount of damages claimed in the Complaint.

**DEMAND FOR JURY TRIAL**

Graham hereby demands a trial by jury as to all issues so triable herein.

Respectfully submitted,

McGIVNEY & KLUGER, P.C.

23 Vreeland Road

Suite 220

Florham Park, New Jersey 07932

(973) 822-1110

Attorneys for defendant Graham Medical

Technologies, L.L.C. d/b/a GraMedica, Inc.,

i/p/a Gramedica, LLC and/or Gramedica Foot Care  
Solutions


By: 

WILLIAM D. SANDERS

Dated: July 21, 2010

**CERTIFICATION PURSUANT TO RULE 4:5-1**

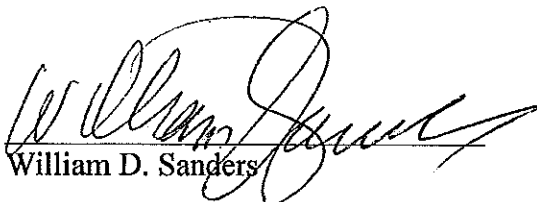
It is hereby certified that to the best of my present knowledge as counsel for Graham that the matter in controversy which is the subject of this litigation involving the named parties hereto is not the subject matter of controversy in any pending litigation or arbitration proceeding. I certify that the foregoing statement made by me is true and I am aware that if it is willfully false, I am subject to punishment.

  
William D. Sanders

Dated: July 21, 2010

**CERTIFICATION PURSUANT TO RULE 4:6-1(d)**

It is hereby certified that to the best of my present knowledge as counsel for Graham that the within pleading is served upon counsel for the plaintiff within the time prescribed by the Rules of Court or extended as the Court and/or counsel may agree pursuant thereto. I certify that the foregoing statement made by me is true and I am aware that if it is willfully false, I am subject to punishment.

  
William D. Sanders

Dated: July 21, 2010



# Exhibit C

**RUPRECHT, HART & WEEKS, LLP**  
COUNSELLORS AT LAW  
306 Main Street  
Millburn, New Jersey 07041  
Telephone (973) 379-2400  
Telecopier (973) 379-2446

LOUIS A. RUPRECHT\*  
THOMAS C. HART\*  
DAVID PARKER WEEKS\*  
MICHAEL R. RICCIARDULLI\*

KARIN J. WARD  
BRIAN P. MAHER  
MATTHEW E. BLACKMAN  
SARAH J. GURKA  
JOHN W. GREGOREK  
DANIEL B. DEVINNEY  
ADAM KARCZEWSKI  
BRION D. McGLINN  
JESSICA J. MAHONY

\*Certified by the Supreme Court of New Jersey as a Civil Trial Attorney

**TO: William Sanders, Esq.**

**FAX NO. 973-822-1116**

**FROM: Jessica J. Nasta, Esq.**

**DATE: January 14, 2011**

**RE: O'Neill v. Totten  
Our File No. 1815**

**We are enclosing 39 pages, including this transmittal sheet.**

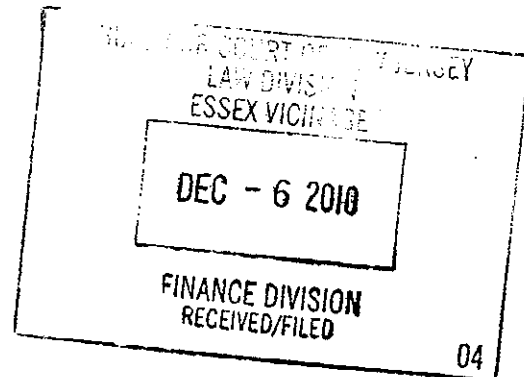
**If you have any difficulties with this transmission, please contact Carolyn at (973) 379-2400.**

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**Special Requests or Comments:**

CONFIDENTIALITY NOTE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTING OR COPYING OF THIS TELECOPY IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE SO THAT WE CAN ARRANGE FOR THE RETURN OF THE ORIGINAL DOCUMENTS TO US AT NO EXTRA COST TO YOU, OR

YOU MAY RETURN THE ORIGINAL DOCUMENT TO US BY MAIL, WITHOUT MAKING A COPY, AND WE WILL REIMBURSE YOUR EXPENSE.



RUPRECHT, HART & WEEKS, LLP  
306 Main Street  
Millburn, New Jersey 07041  
(973) 379-2400

Attorney for Defendant, James C. Totten, DPM

KATHLEEN O'NEILL and MICHAEL  
O'NEILL, her husband,

Plaintiff,

v.

JAMES C. TOTTON, DPM, PATRICIA  
BERRAN, DPM, CLAUDIO GOMEZ,  
DPM, individually or as agents,  
servants and/or employees of  
SAINT BARNABAS AMBULATORY CARE  
CENTER; GRAMEDICA, LLC; and/or  
GRAMEDICA, LLC; and/or  
GRAMEDICA FOOT CARE SOLUTIONS;  
DRS. JOHN and/or JANE DOES (1-  
5); ABC MEDICAL GROUP(S); ABC  
CORPS. (1-5) and/or ASSOCIATES  
(1-5) (all fictitious names),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No. ESX-L-3577-10

Civil Action

NOTICE OF MOTION  
TO DISMISS PLAINTIFF'S  
COMPLAINT FOR FAILURE  
TO PROVIDE AN APPROPRIATE  
AFFIDAVIT OF MERIT

TO: Robert M. Anderson, Esq.  
Escandon, Fernicola, Anderson & Covelli  
301 Main Street  
P.O. Box 211  
Allenhurst, NJ 07711

ON NOTICE TO:

Debra V. Uranowicz-Pandos, Esq.  
Duran & Pandos  
1044 Route 22 West  
Suite 5  
Mountainside, New Jersey 07092

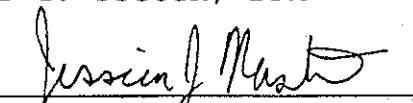
SIRS:

PLEASE TAKE NOTICE that on Friday, January 7, 2011 at 9:00 a.m. in the forenoon or as soon thereafter as counsel may be heard, the undersigned will apply to the above named Court, Essex County Courthouse, Newark, New Jersey, for an Order dismissing plaintiff's Complaint and any and all crossclaims against the Defendant, James C. Totten, DPM, for plaintiff's failure to provide an appropriate Affidavit of Merit. The defendant will rely upon the attached Brief and Certification of Counsel.

In accordance with R. 1:6-2, we hereby request that this matter be submitted to the court for ruling on the attached papers unless opposition is filed. A proposed form of Order is attached.

I hereby certify that the within notice of motion has been filed with the Clerk of Essex County in Newark, New Jersey and true copies have been served upon all counsel of record via regular mail.

RUPRECHT, HART & WEEKS, LLP  
Attorneys For Defendant,  
James C. Totten, DPM

By:   
Jessica D. Nasta

Dated: December 2, 2010

CALENDAR CALL: None  
PRE-TRIAL CONFERENCE: None  
TRIAL DATE: None  
DED: September 7, 2011



KATHLEEN O'NEILL and MICHAEL  
O'NEILL, her husband,

Plaintiff,

v.

JAMES C. TOTTEN, DPM, PATRICIA  
BERRAN, DPM, CLAUDIO GOMEZ,  
DPM, individually or as agents,  
servants and/or employees of  
SAINT BARNABAS AMBULATORY CARE  
CENTER; GRAMEDICA, LLC; and/or  
GRAMEDICA, LLC; and/or  
GRAMEDICA FOOT CARE SOLUTIONS;  
DRS. JOHN and/or JANE DOES (1-  
5); ABC MEDICAL GROUP(S); ABC  
CORPS. (1-5) and/or ASSOCIATES  
(1-5) (all fictitious names),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No. ESX-L-3577-10

Civil Action

**BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S  
COMPLAINT FOR FAILURE TO PROVIDE AN APPROPRIATE AFFIDAVIT OF MERIT**

Ruprecht, Hart & Weeks, LLP  
306 Main Street  
Millburn, New Jersey 07041  
(973) 379-2400  
Attorney for Defendant,  
James C. Totten, DPM

On the Brief:  
Jessica J. Nasta, Esq.

Of Counsel on the Brief:  
Louis A. Ruprecht, Esq.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ESSEX VICINAGE

DEC - 6 2010

FINANCE DIVISION  
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STATEMENT OF FACTS

1. The plaintiff filed the present action against the defendants, sounding in medical malpractice, on April 26, 2010. (See Plaintiff's Complaint attached as **Exhibit A**).

2. Defendant, James C. Totten, DPM, filed an Answer to the Complaint on August 2, 2010. (See Dr. Totten's Answer attached as **Exhibit B**).

3. Dr. Totten's Answer to the plaintiff's Complaint includes the following separate defense, "In the event that plaintiff does not file a timely and proper affidavit of merit according to N.J.S.A. 2A:53A-26, et. seq., then this defendant pleads the benefits of same." (See **Exhibit B**).

5. The 120-day deadline for service of a timely and appropriate Affidavit of Merit, pursuant to N.J.S.A. 2A:53A-26 et seq. and N.J.S.A. 2A:53A-41 et seq., with regard to Dr. Totten was November 18, 2010.

18. To date, the plaintiff has failed to serve an appropriate Affidavit of Merit as to Dr. Totten. In fact, plaintiff has failed to file any affidavit whatsoever regarding Dr. Totten.

Based on the foregoing facts and the following case law and analysis, it is respectfully submitted that because the plaintiff has failed to provide an appropriate Affidavit of Merit as to defendant, James C. Totten, DPM, the Complaint against Dr. Totten must be dismissed with prejudice.

LEGAL ARGUMENT

THE COURT SHOULD GRANT DR. TOTTEN'S MOTION TO DISMISS THE PLAINTIFF'S COMPLAINT WITH PREJUDICE PURSUANT TO N.J.S.A. 2A:53A-26 AND N.J.S.A. 2A:53A-41, AS PLAINTIFF HAS FAILED TO SUPPLY AN AFFIDAVIT OF MERIT.

The Affidavit of Merit statute provides that:

[i]n an action for damages for personal injuries, wrongful death...resulting from an alleged act of malpractice or negligence by a licensed person in his profession or occupation, the plaintiff shall within 60 days following the date of filing of the answer to the complaint by the defendant, provide each defendant with an affidavit of merit of an appropriate licensed person that there exists a reasonable probability that the care, skill or knowledge exhibited in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional or occupational standards or treatment practices. The court may grant no more than one additional period, not to exceed 60 days, to file the affidavit pursuant to this section, upon a finding of good cause.

N.J.S.A. 2A:53A-27.

This section of the Affidavit of Merit Statute was recently amended to require that in medical malpractice cases, "the person executing the affidavit shall meet the requirements of a person who provides expert testimony or executes an affidavit as set forth in N.J.S.A. 2A:53A-41." See, N.J.S.A. 2A:53A-27. Thus, in actions that accrue after July 9, 2004, N.J.S.A. 2A:53A-41 governs the qualifications of those who provide expert testimony or execute an affidavit of merit. This new section of the Affidavit of Merit statute provides in relevant part:

In an action alleging medical malpractice, a person shall not give expert testimony or execute an affidavit pursuant to the provisions of P.L.1995, c. 139 (C.2A:53A-26 et seq.) on the appropriate standard of practice or care unless the person is licensed as a physician or other health care professional in the United States and meets the following criteria:

a. If the party against whom or on whose behalf the testimony is offered is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association and the care or treatment at issue involves that specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the person providing the testimony shall have specialized at the time of the occurrence that is the basis for the action in the same specialty or subspecialty, recognized by the American Board of Medical Specialties or the American Osteopathic Association, as the party against whom or on whose behalf the testimony is offered, and if the person against whom or on whose behalf the testimony is being offered is board certified and the care or treatment at issue involves that board specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association, the expert witness shall be:

(1) a physician credentialed by a hospital to treat patients for the medical condition, or to perform the procedure, that is the basis for the claim or action; or

(2) a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association who is board certified in the same specialty or subspecialty, recognized by the American Board of Medical Specialties or the American Osteopathic Association, and during the year immediately preceding the date of the occurrence that is the basis for the claim or action, shall have devoted a majority of his professional time to either:

(a) the active clinical practice of the same health care profession in which the defendant is licensed, and, if the defendant is a specialist or subspecialist recognized by the American Board of Medical Specialties or the American Osteopathic Association, the active clinical practice of that specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(b) the instruction of students in an accredited medical school, other accredited health professional school or accredited residency or clinical research program in the same health care profession in which the defendant is licensed, and, if that party is a specialist or subspecialist recognized by the American Board of Medical



Specialties or the American Osteopathic Association, an accredited medical school, health professional school or accredited residency or clinical research program in the same specialty or subspecialty recognized by the American Board of Medical Specialties or the American Osteopathic Association; or

(c) both.

N.J.S.A. 2A:53A-41.

It is clear that the requirements to be an affiant are significantly stricter under the new statute than the old statute. Specifically, the affiant now must be in the same specialty or sub-specialty as the defendant, whereas under the prior statute the affiant need only be substantially devoted to the same general area or specialty for at least five years. This stricter standard is further evidenced by subsection 2A:53A-41(c), which states that the court may waive the same specialty requirement only upon motion by the plaintiff and only after the plaintiff has demonstrated to the satisfaction of the court that a good faith effort has been made to identify an expert in the same specialty or sub-specialty. The plaintiff has not filed such a motion.

The plaintiff must show that the Complaint is meritorious by obtaining an affidavit from an appropriate, licensed expert attesting to the "reasonable probability" of professional negligence. N.J.S.A. 2A:53A-27; Palanque v. Lambert Wooley, 168 N.J. 398, 404 (2001). The affidavit of merit must be provided to the defendant within sixty days of the filing of the answer or, for good cause shown, within an additional sixty day period. N.J.S.A. 2A:53A-27. The plaintiff's failure to serve an appropriate affidavit of merit within 120 days of the filing of the answer is considered tantamount to the failure to state a

cause of action, subjecting the complaint to dismissal with prejudice. N.J.S.A. 2A:53A-29; Palanque, supra, 168 N.J. at 404; Cornblatt, supra, 153 N.J. at 247.

The statute's essential goal is to put to rest unmeritorious and frivolous malpractice lawsuits at an early stage of litigation while allowing worthy claims to proceed through discovery and, if warranted, to trial. Knorr v. Smeal, 187 N.J. 169, 176 (2003); Palanque, supra, 168 N.J. at 404.

As indicated above, the amendment to the Affidavit of Merit Statute applies to cases that accrue on or after July 9, 2004. Therefore, the amended statute applies to Ms. O'Neill's allegations herein because they accrued during September, 2007 through December 4, 2008 during her treatment with James C. Totten, DPM.

Here, it is undisputed that Dr. Totten is a specialist under N.J.S.A. 2A:53A-41(a). However, the plaintiff has not submitted any Affidavit of Merit as to Dr. Totten. As indicated above, the plaintiff is required to provide a statutorily adequate Affidavit of Merit within 120 days of the filing of the defendant's Answer. Failure to do so constitutes failure to state a cause of action. N.J.S.A. 2A:53A-29. Here, Dr. Totten filed his Answer to the plaintiff's Complaint on August 2, 2010. Thus, the 120-day period for the filing of an appropriate Affidavit of Merit expired on November 30, 2010, and the plaintiff's complaint must be dismissed with prejudice.

CONCLUSION

For all the foregoing reasons, defendant, James C. Totten, DPM's motion to dismiss the Complaint for failure to timely provide an appropriate affidavit of merit must be granted, and the plaintiff's Complaint as to Dr. James C. Totten must be dismissed with prejudice.

Respectfully submitted,  
RUPRECHT, HART & WEEKS, LLP  
Attorneys for Defendant,  
James C. Totten, DPM

By: 

Jessica J. Nasta

DATED: December 2, 2010

RUPRECHT, HART & WEEKS, LLP  
306 Main Street  
Millburn, New Jersey 07041  
(973) 379-2400  
Attorney for Defendant, James C. Totten, DPM

KATHLEEN O'NEILL and MICHAEL  
O'NEILL, her husband,

Plaintiff,

v.

JAMES C. TOTTEN, DPM, PATRICIA  
BERRAN, DPM, CLAUDIO GOMEZ,  
DPM, individually or as agents,  
servants and/or employees of  
SAINT BARNABAS AMBULATORY CARE  
CENTER; GRAMEDICA, LLC; and/or  
GRAMEDICA, LLC; and/or  
GRAMEDICA FOOT CARE SOLUTIONS;  
DRS. JOHN and/or JANE DOES (1-  
5); ABC MEDICAL GROUP(S); ABC  
CORPS. (1-5) and/or ASSOCIATES  
(1-5) (all fictitious names),

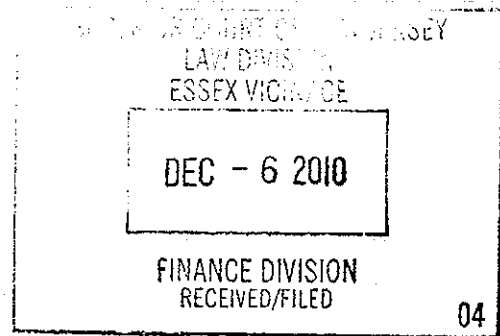
Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No. ESX-L-3577-10

Civil Action

**CERTIFICATION OF COUNSEL**



I, Jessica J. Nasta, Esq., hereby certify as follows:

1. I am an associate with the law firm of Ruprecht, Hart & Weeks, LLP. We represent the defendant, James C. Totten, DPM, with the above entitled matter. As such, I am fully familiar with the facts set forth herein.

2. This certification is made in support of defendant's Motion to dismiss plaintiff's Complaint for failure to provide an appropriate Affidavit of Merit.

3. Attached hereto as **Exhibit A** is a true and accurate copy of plaintiff's Complaint.

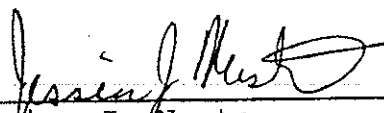


4. Attached hereto as **Exhibit B** is a true and accurate copy of the Answer filed on behalf of defendant, James C. Totten, DPM.

5. Attached hereto as **Exhibit C** is a true and accurate copy of the curriculum vitae of James C. Totten, DPM.

6. To date, we have not received an Affidavit of Merit from plaintiff regarding defendant, James C. Totten, DPM.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
\_\_\_\_\_  
Jessica J. Nasta

Dated: December 2, 2010

# EXHIBIT A

732 260 0500

VICTOR M. COVELLI

09:47:59 a.m. 05-28-2010 22/29

OUR FILE NO.: 10599  
ESCANDON, FERNICOLA, ANDERSON & COVELLI  
301 Main Street  
P.O. Box 211  
Allenhurst, New Jersey 07711  
(732) 663-1920  
Attorneys for Plaintiff

APR 26 2010

RECEIVED

KATHLEEN O'NEILL and MICHAEL  
HARRINGTON, her husband,

Plaintiff,

V.

JAMES C. TOTTEN, DPM, PATRICIA  
BERRAN, DPM, CLAUDIO GOMEZ,  
DPM, individually and/or as agents,  
servants and/or employees of SAINT  
BARNABAS AMBULATORY CARE  
CENTER, ; GRAMEDICA, LLC; and/or  
GRAMEDICA FOOT CARE  
SOLUTIONS; DRS. JOHN and/or JANE  
DOES (1-5), ABC MEDICAL  
GROUP(S), ABC CORPS (1-5) and/or  
ASSOCIATES (1-5) (all fictitious names)

Defendants

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

DOCKET NO: ESX-L

Civil Action

COMPLAINT

APR 26 2010

FINANCE DIVISION  
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Plaintiffs, KATHLEEN O'NEILL and MICHAEL HARRINGTON,  
residing at 103 Potomac Drive, in the Town of Basking Ridge, County of  
Somerset and State of New Jersey complaining of the defendants, allege and  
say:

**FACTS COMMON TO ALL COUNTS**

1. The plaintiff, Kathleen O'Neill, was a patient of James C. Totten, DPM at all times relevant to this action through June 2, 2008.
2. Plaintiff was a patient of Patricia Berran, DPM beginning

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September 2007 through December 4, 2008.

3. On December 7, 2007, Dr. Totten performed surgery utilizing the HyProCure Sinus Tarsi Implant developed, designed, manufactured and sold by Gramedica, LLC and/or Foot Care Solutions. Dr. Totten, was assisted by Patricia Berran, DPM and Claudio Gomez, DPM during which the HyProCure Sinus Tarsi Implant was inserted into plaintiff's left ankle.

4. On April 25, 2008, a second surgery was performed to remove the HyProCure Sinus Tarsi Implant.

5. On or about June 2, 2008, during a routine visit with James C. Totten, DPM, the doctor indicated to the plaintiff that the HyProCure Sinus Tarsi Implant which was inserted in her left ankle had sited requiring the April 25, 2008 surgery to remove the implant.

6. On or about August 7, 2009, plaintiff was made aware that there was not an orthopedic doctor in all of New Jersey that would have put this device in her ankle.

#### FIRST COUNT

1. At all times herein mentioned, plaintiff KATHLEEN O'NEILL, was a patient of defendants herein jointly and/or severally, for care and/or treatment.

2. At all times mentioned, defendants, JAMES C. TOTTEN, DPM, PATRICIA BETTAN, DPM, CLAUDIO GOMEZ, DPM, individually and/or as agents, servants and/or employees of SAINT BARNABAS AMBULATORY CARE CENTER; JOHN and/or JANE DOES, M.D.'S (1-5); ABC MEDICAL GROUP(S); ABC

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CORPS (1-5) and/or ASSOCIATES (1-5) (all fictitious names) located at 200 South Orange Avenue, Township of Livingston, County of Essex, State of New Jersey.

3. Defendants herein jointly and/or severally, owed the plaintiff a duty to exercise a degree of diligence and skill required of the average health care provider, medical facility and/or practitioner of his or her respective specialty in his or her particular locale.

4. The defendants breached a duty of care which the defendants owed the plaintiff due to the negligence of the defendants. The defendants were negligent, jointly and severally due to the fact that defendants deviated from the applicable standard of care during their care of plaintiff.

5. As a direct and proximate result of the negligence and deviation of the defendants, plaintiff was and will in the future be caused to incur much pain and suffering, mental anguish, economic loss, had to expend sums for medical expenses and is forever prevented from attending to her normal activities, however limited.

WHEREFORE, plaintiff herein hereby demands judgment against the defendants aforesaid, their agents, servants and/or employees, jointly and/or severally, for compensatory damages, punitive damages, together with interest, costs of suit and counsel fees.

#### SECOND COUNT

Plaintiff repeats, reiterates and realleges each and every paragraph of the First Count herein and makes the same a part hereof by reference thereto.



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1. At all times herein mentioned, the defendants, GRAMEDICA, LLC and/or GRAMEDICA FOOT CARE SOLUTIONS knew or had reason to know of the intended use of said HyProCure Sinus Tarsi Implant and expressly and impliedly represented by warranty that said HyProCure Sinus Tarsi Implant which the defendants designed, manufactured, inspected, assembled, installed, tested, leased, rented, sold and/or distributed would be reasonably fit for the purpose in which it was intended to be used, and that said HyProCure Sinus Tarsi Implant was of a merchantable quality and free from defects of design and/or manufacture or other defects, faults or shortcomings.

2. The defendants, breached said expressed and implied warranties given to the plaintiff and other similarly in the possession of said HyProCure Sinus Tarsi Implant was designed, manufactured, assembled, inspected, installed, maintained, tested, leased, rented, sold and/or distributed in a defective, dangerous, unsafe, unsound, unsuitable and unworkmanlike condition, and was further unfit for the purpose intended because it failed to contain adequate warnings or instructions and was not of merchantable quality.

3. As a direct and proximate result of the defendants' breach of expressed and implied warranties, as aforesaid, either jointly, severally, or in the alternative, the plaintiff, Kathleen O'Neill, has suffered serious and permanent personal injuries; she has suffered and will in the future suffer great pain; she has been and will in the future be forced to expend large sums of money for medical care and attention; she has lost and will in the future

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lose large sums of money for wages; and she has been and will in the future be unable to pursue her normal daily activities as before.

WHEREFORE, Plaintiff demands judgment against the defendants, on this count, either jointly, severally, or in the alternative, for damages, together with interest and costs of suit, and counsel fees.

### THIRD COUNT

Plaintiff repeats, reiterates and realleges each and every paragraph of the First through Second Counts herein and makes the same a part hereof by reference thereto.

1. On or before the aforementioned time and place, said defendants, GRAMEDICA, LLC. and/or GRAMEDICA FOOT CARE SOLUTIONS manufactured, designed, sold a HyProCure Sinus Tarsi Implant not reasonably fit, suitable or safe for its intended purpose because it deviated from the design specifications, formula, or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae; or failed to contain adequate warnings, instructions; or was designed in a defective manner, as a result of which the plaintiff, Kathleen O'Neill, was caused to sustain injury to be in violation of the State of New Jersey's Laws of Product Liability.

2. As a direct and proximate result of the negligence of the defendants either jointly, severally, or in the alternative, as aforesaid, the plaintiff, Kathleen O'Neill, has suffered serious and permanent personal injuries; she has suffered and will in the future suffer great pain; she has lost

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and will in the future be forced to expend large sums of money for medical care and attention; she has lost and will in the future lose large sums of money for wages; and she has been and will in the future be unable to pursue her normal daily activities as before.

WHEREFORE, Plaintiffs demand judgment against the defendants on this count, either jointly, severally, or in the alternative, for damages, together with interest and costs of suit, and counsel fees.

#### FOURTH COUNT

Plaintiffs herein repeat, reiterate and reallege each and every allegation contained in the First through Third Counts as if set forth at length herein.

1. Plaintiff, MICHAEL HARRINGTON was and is the husband of plaintiff, KATHLEEN O'NEILL.

2. By reason of the aforesaid, plaintiff MICHAEL HARRINGTON has been, and will in the future be, deprived of the comfort, companionship and society of his wife, KATHLEEN O'NEILL.

WHEREFORE, plaintiff MICHAEL HARRINGTON, hereby demands judgment against the defendants aforesaid, jointly and/or severally, for compensatory damages, punitive damages, together with interest, costs of suit and counsel fees.

#### NOTICE OF OTHER ACTIONS

Pursuant to R. 4:5-1, I certify that the matter in controversy is not the subject of any other action in any court or of a pending arbitration proceeding and, to the best of my knowledge, none is contemplated at this time. I further certify

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that, to the best of my knowledge and belief, there are no other parties who should be joined in this action.

**DEMAND FOR INSURANCE DISCOVERY**

Pursuant to R 4:10-2(b) demand is hereby made that you disclose to the undersigned whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy the judgment.

**NOTICE PURSUANT TO RULES 1:5-1(a) AND 4:17-4(c)**

PLEASE TAKE NOTICE that the undersigned attorneys do hereby demand, pursuant to the above-cited Rules of Court, that each party herein ~~serving pleadings and interrogatories and receiving answers thereto~~, serve copies of all such pleadings and answered interrogatories and all documents, papers and other materials referred to therein, received from any party, upon the undersigned attorneys and, further, TAKE NOTICE that this is a CONTINUING demand.

**DEMAND FOR INTERROGATORIES**

Plaintiff hereby demands of each Defendant certified answers to FORM C and C-3 Interrogatories within the time prescribed by the Rules of Court.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, the undersigned is hereby designated as trial counsel.





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VICTOR M. COVELLI

09:47:47 a.m. 05-28-2010

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Side 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)

**Track I - 160 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (INCLUDING DECLARATORY JUDGMENT ACTIONS)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 501 SUMMARY ACTION
- 502 OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)
- 599 OTHER (Briefly describe nature of action)

**Track II - 300 days' discovery**

- 505 CONSTRUCTION
- 506 EMPLOYMENT (other than CEPA or LAD)
- 509 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 609 TORT - OTHER

**Track III - 450 days' discovery**

- 605 CIVIL RIGHTS
- 501 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 610 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 611 INVERSE CONDEMNATION
- 616 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 158 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 Zalcovir
- 286 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

**Mass Tort (Track IV)**

- 248 CIBA GEIGY
- 266 HORMONE REPLACEMENT THERAPY (HRT)
- 271 ACCUTANE
- 272 BEXTRA/CELEBREX
- 274 RISPERDAL/SEROQUEL/ZYPREXA
- 275 ORTHO EVRA
- 277 MARIYAH TOXIC DUMP SITE
- 278 ZOMETA/AREXIA
- 279 GADOLINUM

- 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
- 282 FORAMAX
- 283 DIGITEK
- 284 NUVARING
- 285 LEVAQUIN
- 287 YAZ/YASMIN/CELLA
- 601 ASBESTOS
- 619 VIOXX

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Verbal Threshold

☐ Putative Class Action

☐ Title 59

Effective 04/01/2010, CN 10817-English

page 2 of 2

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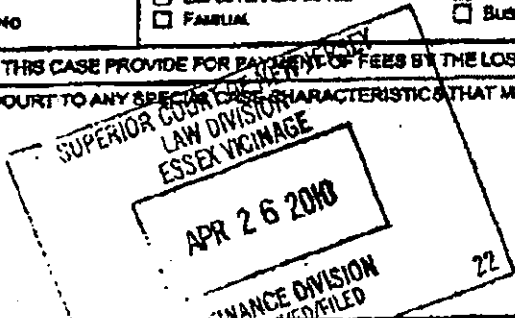
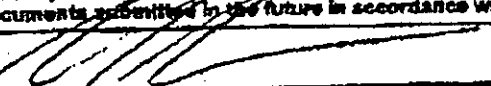
VICTOR M. COVELL

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05-28-2010

20/29

**Appendix XII-B1**

| CIVIL CASE INFORMATION STATEMENT (CIS)  |   | FOR USE BY CLERK'S OFFICE ONLY   |  |
|---|---|--|--|
|  <p>Use for Initial Law Division<br/>Civil Part pleadings (not motions) under Rule 4:5-1<br/>Pleading will be rejected for filing, under Rule 1:5-6(c),<br/>if information above the black bar is not completed<br/>or attorney's signature is not affixed</p> |   | PAYMENT TYPE <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA |  |
|   |   | CHECK NO.  |  |
|   |   | AMOUNT:  |  |
|   |   | OVERPAYMENT:   |  |
|   |   | BATCH NUMBER:  |  |
| ATTORNEY / PRO SE NAME<br>Robert M. Anderson, Esq.  | TELEPHONE NUMBER<br>(732) 663-1920  | COUNTY OF VENUE<br>Essex   |  |
| FIRM NAME (if applicable)<br>Escandon, Ferricola, Anderson & Covelli  |   | DOCKET NUMBER (when available)<br>ESX-L 337740   |  |
| OFFICE ADDRESS<br>301 Main Street<br>P.O. Box 211<br>Allenhurst, New Jersey 07711   |   | DOCUMENT TYPE<br>Complaint   |  |
|   |   | JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                  |  |
| NAME OF PARTY (e.g., John Doe, Plaintiff)   | CAPTION   |  |  |
| Kathleen O'Neill and Michael Harrington, Plaintiffs   | Kathleen O'Neill and Michael Harrington v. James C. Totten, DPM; Patricia Barran, DPM; Claudio Gomez, DPM; individually and/or as agents, servants and/or employees of Saint Barnabas, et al      |  |  |
| CASE TYPE NUMBER (See reverse side for listing)<br>804  | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  |  |
|   | IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.  |  |  |
| RELATED CASES PENDING?  | IF YES, LIST DOCKET NUMBERS   |  |  |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |  |  |
| DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)?   | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)  |  |  |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   | <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN   |  |  |
| THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.   |   |  |  |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION   |   |  |  |
| DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?  | IF YES, IS THAT RELATIONSHIP:   |  |  |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   | <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILY <input type="checkbox"/> BUSINESS |  |  |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |  |  |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION<br>Unknown at this time   |   |  |  |
|   |   |  |  |
| DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATION?  | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION   |  |  |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |  |  |
| WILL AN INTERPRETER BE NEEDED?  | IF YES, FOR WHAT LANGUAGE?  |  |  |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |  |  |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).   |   |  |  |
| ATTORNEY SIGNATURE:    |   |  |  |

Effective 04/01/2010, CN 10517-English

page 1 of 2

732 280 0500

VICTOR M. COVELLI

09:44:30 a.m. 05-28-2010

4/29

**ESSEX COUNTY:**

Deputy Clerk of the Superior Court  
30 West Market Street  
Room 131  
Newark, NJ 07102  
LAWYER REFERRAL (973) 622-6207  
LEGAL SERVICES (973) 624-4500

**GLOUCESTER COUNTY:**

Deputy Clerk of the Superior Court  
Civil Case Management Office  
Attn: Intake, First Fl., Court House  
1 North Broad St., P.O. Box 129  
Woodbury, NJ 08096  
LAWYER REFERRAL (856) 848-4589  
LEGAL SERVICES (856) 848-5360

**HUDSON COUNTY:**

Deputy Clerk of the Superior Court  
Superior Court, Civil Records Dept.  
583 Newark Avenue  
Jersey City, NJ 07306  
LAWYERS REFERRAL (201) 798-2727  
LEGAL SERVICES (201) 792-6363

**HUNTERDON COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division  
65 Park Avenue  
Flemington, NJ 08862  
LAWYER REFERRAL (908) 735-2611  
LEGAL SERVICES (908) 782-7979

**SOMERSET COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division Office  
New Court House, 3<sup>rd</sup> Floor  
P.O. Box 3000  
Somerville, NJ 08876  
LAWYER REFERRAL (908) 685-2323  
LEGAL SERVICES (908) 231-0840

**SUSSEX COUNTY:**

Deputy Clerk of the Superior Court  
Sussex County Judicial Center  
43-47 High Street  
Newton, NJ 07860  
LAWYER REFERRAL (973) 267-5882  
LEGAL SERVICES (973) 383-7400

**UNION COUNTY:**

Deputy Clerk of the Superior Court  
1<sup>st</sup> Fl., Court House  
2 Broad Street  
Elizabeth, NJ 07207-6073  
LAWYER REFERRAL (908) 353-4715  
LEGAL SERVICES (908) 354-4340

**WARREN COUNTY:**

Deputy Clerk of the Superior Court  
Civil Division Office  
Court House  
Belvidere, NJ 07823-1500  
LAWYER REFERRAL (973) 267-5882  
LEGAL SERVICES (973) 475-2010

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VICTOR M. COVELLI

09:44:17 a.m.

05-28-2010

3/29

**ATLANTIC COUNTY:**

Deputy Clerk of the Superior Court  
 Civil Division, Direct Filing  
 1201 Bacharach Blvd., First Fl.  
 Atlantic City, NJ 08401  
 LAWYER REFERRAL (609) 343-3444  
 LEGAL SERVICES (609) 348-4200

**BERGEN COUNTY:**

Deputy Clerk of the Superior Court  
 Case Processing Section, Rm. 119  
 Justice Center, 10 Main St.  
 Hackensack, NJ 07601-0769  
 LAWYER REFERRAL (201) 488-0044  
 LEGAL SERVICES (201) 487-2166

**BURLINGTON COUNTY:**

Deputy Clerk of the Superior Court  
 Central Processing Office  
 Attn: Judicial Intake  
 First Fl., Courts Facility  
 49 Rancocas Rd.  
 Mt. Holly, NJ 08060  
 LAWYER REFERRAL (609) 261-4862  
 LEGAL SERVICES (609) 261-1088

**CAMDEN COUNTY:**

Deputy Clerk of the Superior Court  
 Civil Processing Office  
 1st Fl., Hall of Records  
 101 S. Fifth St.  
 Camden, NJ 08103  
 LAWYER REFERRAL (856) 964-4520  
 LEGAL SERVICES (856) 964-2010

**CAPE MAY COUNTY:**

Deputy Clerk of the Superior Court  
 Central Processing Office  
 9 N. Main Street  
 Box DN-209  
 Cape May Court House, NJ 08210  
 LAWYER REFERRAL (609) 463-0313  
 LEGAL SERVICES (609) 465-3001

**CUMBERLAND COUNTY:**

Deputy Clerk of the Superior Court  
 Civil Case Management Office  
 Broad & Fayette Sts., P.O. Box 615  
 Bridgeton, NJ 08302  
 LAWYER REFERRAL (856) 692-6207  
 LEGAL SERVICES (856) 451-0003

**MERCER COUNTY:**

Deputy Clerk of the Superior Court  
 Local Filing Office, Courthouse  
 175 South Broad St., P.O. Box 8068  
 Trenton, NJ 08650  
 LAWYER REFERRAL (609) 583-6200  
 LEGAL SERVICES (609) 695-6249

**MIDDLESEX COUNTY:**

Deputy Clerk of the Superior Court  
 Administration Building, 3rd Floor  
 1 Kennedy Sq., P.O. Box 2633  
 New Brunswick, NJ 08903-2633  
 LAWYER REFERRAL (732) 828-0053  
 LEGAL SERVICES (732) 249-7600

**MONMOUTH COUNTY:**

Deputy Clerk of the Superior Court  
 71 Monument Park  
 P.O. Box 1269  
 Freehold, NJ 07728-1262  
 LAWYER REFERRAL (732) 431-5544  
 LEGAL SERVICES (732) 866-0020

**MORRIS COUNTY:**

Deputy Clerk of the Superior Court  
 Civil Division  
 30 Schuyler Pl., P.O. Box 910  
 Morristown, NJ 07960-0910  
 LAWYER REFERRAL (973) 267-5882  
 LEGAL SERVICES (973) 285-6911

**OCEAN COUNTY:**

Deputy Clerk of the Superior Court  
 Court House, Room 119  
 118 Washington Street  
 Toms River, NJ 08754  
 LAWYER REFERRAL (732) 240-3666  
 LEGAL SERVICES (732) 341-2727

**PASSAIC COUNTY:**

Deputy Clerk of the Superior Court  
 Civil Division  
 77 Hamilton St.  
 Paterson, NJ 07503  
 LAWYER REFERRAL (973) 278-9223  
 LEGAL SERVICES (973) 345-7171

**SALEM COUNTY:**

Deputy Clerk of the Superior Court  
 92 Market St., P.O. Box 18  
 Salem, NJ 08079  
 LAWYER REFERRAL (856) 935-5628  
 LEGAL SERVICES (856) 451-0003

# EXHIBIT B



RUPRECHT, HART & WEEKS, LLP  
306 Main Street  
Millburn, New Jersey 07041  
(973) 379-2400  
Attorney for Defendants, James C. Totten, DPM

KATHLEEN O'NEILL and MICHAEL  
O'NEILL, her husband,

Plaintiff,

v.

JAMES C. TOTTEN, DPM, PATRICIA  
BERRAN, DPM, CLAUDIO GOMEZ,  
DPM, individually or as agents,  
servants and/or employees of  
SAINT BARNABAS AMBULATORY CARE  
CENTER; GRAMEDICA, LLC; and/or  
GRAMEDICA, LLC; and/or  
GRAMEDICA FOOT CARE SOLUTIONS;  
DRS. JOHN and/or JANE DOES (1-  
5); ABC MEDICAL GROUP(S); ABC  
CORPS. (1-5) and/or ASSOCIATES  
(1-5) (all fictitious names),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No. ESX-L-3577-10

Civil Action

ANSWER TO COMPLAINT, JURY  
DEMAND, DESIGNATION OF TRIAL  
COUNSEL, REQUESTS FOR  
STATEMENT OF DAMAGES AND  
ALLOCATION AND DEMAND  
PURSUANT TO R. 4:18-2

Defendant, James C. Totten, DPM, 40 Ferry Street, Newark, New  
Jersey 07105, by their attorneys, Ruprecht, Hart & Weeks, LLP, by  
way of answer to plaintiff's Complaint, say:

AS TO FACTS COMMON TO ALL COUNTS

1. This defendant has insufficient information upon which  
to admit or deny the allegations of paragraph 1.

2. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 2.

3. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 3.

4. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 4.

5. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 5.

6. This defendant denies the allegations of paragraph 6.

FIRST COUNT

1. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 1 of the First Count.

2. This defendant denies the allegations of paragraph 2 of the First Count.

3. This defendant admits the allegations of paragraph 3 of the First Count.

4. This defendant denies the allegations of paragraph 4 of the First Count.

5. This defendant denies the allegations of paragraph 5 of the First Count.

SECOND COUNT

This defendant repeats his answer to the preceding count as if set forth at length.

1. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 1 of the Second Count.

2. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 2 of the Second Count.

3. This defendant denies the allegations of paragraph 3 of the Second Count.

### THIRD COUNT

This defendant repeats his answer to the preceding counts as if set forth at length.

1. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 1 of the Third Count.

2. This defendant denies the allegations of paragraph 2 of the Third Count.

### FOURTH COUNT

This defendant repeats his answer to the preceding counts as if set forth at length.

1. This defendant has insufficient information upon which to admit or deny the allegations of paragraph 1 of the Fourth Count.

2. This defendant denies the allegations of paragraph 2 of the Fourth Count.

### AFFIRMATIVE DEFENSES

#### First Affirmative Defense

This defendant pleads the benefit of the statute of limitations.

#### Second Affirmative Defense

This defendant pleads the benefit of the New Jersey Comparative Negligence Act.

**Third Affirmative Defense**

This defendant pleads the doctrine of avoidable consequences.

**Fourth Affirmative Defense**

In the event that plaintiff does not file a timely and proper affidavit of merit according to N.J.S.A. 2A:53A-26, et seq., then this defendant pleads the benefits of same.

**Fifth Affirmative Defense**

The plaintiff has failed to comply with the provisions of R. 4:4-1 with respect to the service of the summons and complaint.

**Sixth Affirmative Defense**

The complaint fails to set forth a claim upon which relief can be granted.

**Seventh Affirmative Defense**

The accident and injuries were due to the acts of third persons over whom this defendant exercised no control.

**Eighth Affirmative Defense**

The plaintiff is guilty of contributory negligence.

**CROSSCLAIM FOR CONTRIBUTION**

These defendants demand contribution from all co-defendants pursuant to the N.J. Joint Tortfeasors Act, N.J.S.A. 2A:53A-1, et seq. In addition, pursuant to the N.J. Comparative Negligence Act, N.J.S.A. 2A:15-5.1, et seq., in the event plaintiffs have in the past or should in the future, effect a settlement with any other defendant, these defendants will assert the negligence of that settling defendant and will rely

upon the facts, theories, and opinions of all witnesses and all experts revealed in discovery.

**REQUEST FOR ALLOCATION PURSUANT TO RULE 4:7-5(c)**

If any co-defendant settles prior to trial, these defendants will seek an allocation of the percentage of negligence by the fact finder against the settling defendant.

**DEMAND FOR AFFIDAVIT OF MERIT**

This defendant demands a timely and proper affidavit of merit according to N.J.S.A. 2A:53A-26, et. seq.

**DEMAND FOR FORM A AND A(1) INTERROGATORY RESPONSES**

This defendant demands responses to Form A and Form A(1) interrogatories within the time prescribed by the rules of court.

**REQUEST FOR STATEMENT OF DAMAGES**

This defendant requests a statement of damages claimed as to each count of the complaint.

**DESIGNATION OF TRIAL COUNSEL**

In accordance with R.4:25-4, Louis A. Ruprecht has been designated as trial counsel in this matter.

**JURY DEMAND**

This defendant demands a trial by jury as to all issues involved.

**RULE 4:5-1 AND FILING AND MAILING CERTIFICATION**

I hereby certify that within my current knowledge, the matter in controversy is not the subject of any other action pending in any court or pending arbitration proceedings and no such other actions or arbitration proceedings are contemplated and no other party should be joined.

I hereby certify that the within Answer has been filed with the Essex County Clerk and that a true copy has been served upon counsel for plaintiffs, on this date by regular mail.

RUPRECHT, HART & WEEKS, LLP  
Attorneys for defendant,  
James C. Totten, DPM

By:                     

LOUIS A. RUPRECHT

Dated: July 21, 2010

SUPERIOR

CLERK

ESSEX



ALJ

FINANCIAL

RECEIVED



**Appendix XII-B1**

|  |  |   |   |  |
|--|--|---|---|--|
|   | <b>CIVIL CASE INFORMATION STATEMENT<br/>(CIS)</b><br><br>Use for initial Law Division<br>Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1<br><b>Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c),<br/>         if information above the black bar is not completed<br/>         or attorney's signature is not affixed</b> |   | PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA<br>CHG/CK NO: _____<br>AMOUNT: _____<br>OVERPAYMENT: _____<br>BATCH NUMBER: _____ |  |
|  | ATTORNEY / PRO SE NAME<br>Louis A. Ruprecht, Esq.  |   | TELEPHONE NUMBER<br>(973) 379-2400  |  |
|  | FIRM NAME (if applicable)<br>Ruprecht Hart & Weeks, LLP  |   | COUNTY OF VENUE<br>Essex  |  |
|  | DOCKET NUMBER (when available)<br>ESX-L-3577-10  |   | DOCUMENT TYPE<br>Answer w/Crossclaims   |  |
| OFFICE ADDRESS<br>306 Main Street<br>Millburn, New Jersey 07041  |  | JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO   |   |  |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>James C. Totten, DPM  |  | CAPTION<br>O'Neill v. Totten, et al.  |   |  |
| CASE TYPE NUMBER (See reverse side for listing)<br>604   |  | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53A-27 AND APPLICABLE CASE LAW<br>REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. |   |  |
| RELATED CASES PENDING?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  | IF YES, LIST DOCKET NUMBERS   |   |  |
| DO YOU ANTICIPATE ADDING ANY PARTIES<br>(arising out of same transaction or occurrence)?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br>MDA Advantage Insurance Company of New Jersey <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN  |   |  |
| <b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>   |  |   |   |  |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION  |  |   |   |  |
| DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  | IF YES, IS THAT RELATIONSHIP:<br><input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS                  |   |  |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  |   |   |  |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION  |  |   |   |  |
|  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO     |  | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION   |   |  |
| WILL AN INTERPRETER BE NEEDED?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  |  | IF YES, FOR WHAT LANGUAGE?  |   |  |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b). |  |   |   |  |
| ATTORNEY SIGNATURE: _____  |  |   |   |  |

Side 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

**Mass Tort (Track IV)**

- 248 CIBA GEIGY
- 266 HORMONE REPLACEMENT THERAPY (HRT)
- 271 ACCUTANE
- 272 BEXTRA/CELEBREX
- 274 RISPERDAL/SEROQUEL/ZYPREXA
- 275 ORTHO EVRA
- 277 MAHWAH TOXIC DUMP SITE
- 278 ZOMETA/AREXIA
- 279 GADOLINIUM

- 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL
- 282 FOSAMAX
- 283 DIGITEK
- 284 NUVARING
- 286 LEVAQUIN
- 287 YAZ/YASMIN/OCELLA
- 601 ASBESTOS
- 619 VIOXX

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Verbal Threshold

☐ Putative Class Action

☐ Title 59

# EXHIBIT C

# Curriculum Vitae

Name: James C. Totten, D.P.M.  
Podiatric Surgeon

Home Address: 11 Heritage Road  
Florham Park, NJ

Office Address: 40 Ferry Street  
Newark, NJ 07105  
Tel: (973) 817-9577  
Fax: (973) 817-7447

| Education   | Year      | Degree | Specialization |
|---|-----------|--------|----------------|
| Nassau Community College<br>Garden City, NY 11530           | 1977-79   | A.S.   | Pre-Med        |
| Binghamton University<br>(S.U.N.Y.)<br>Binghamton, NY 13902 | 1979-82   | B.A.   | Biology        |
| Centro Bilingue<br>(S.U.N.Y.)<br>Cuernavaca, Me             | 9/81-1/82 |        | Spanish        |

## Graduate

|   |         |        |                 |
|---|---------|--------|-----------------|
| California College of<br>Podiatric Medicine<br>1210 Scott Street<br>San Francisco, CA 94115 | 1982-84 | B.S.   | Medical Science |
| California College of<br>Podiatric Medicine   | 1982-86 | D.P.M. | Podiatry        |

## Postdoctoral Training Residencies

### Years

The Cambridge Hospital  
1493 Cambridge Street  
Cambridge, MA 02139  
Affiliated with: Harvard Medical School

7/86-7/87

Roseland Surgical Center  
556 Eagle Rock Avenue  
Roseland, NJ 07068

9/87-9/88

**Licensures: Podiatric**

|                |           |         |
|----------------|-----------|---------|
| New Jersey:    | #MD001783 | 4/18/88 |
| New York:      | #N004287  | 7/22/87 |
| Massachusetts: | #1823     | 7/08/86 |

**Board Certification**

|   |                    |
|---|--------------------|
| 1. American Board of Podiatric Orthopedics<br>Board Certified: 8/22/92<br>Re-Certified 2002   | Certificate #1477  |
| 2. American Board of Podiatric Surgery<br>Board Certified: Foot Surgery 8/16/96<br>Re-Certified 2005, Expires 08/31/2016                    | Certificate #R4516 |
| 3. American Board of Podiatric Surgery<br>Board certified: Reconstructive rear foot/ Ankle surgery<br>Re-Certified 2005, Expires 08/31/2016 | Certificate#5051   |

**Narcotics Certification**

N.J. CDS #D48143  
N.J. DEA #BT1106942

**Hospital Appointments (Medical Staff)**

|  |        |
|--|--------|
| Saint Barnabas Medical Center<br>94 Old Short Hills Road<br>Livingston, NJ 07039 | Active |
|--|--------|

|  |        |
|--|--------|
| Glen Ridge Surgical Center<br>230 Sherman Avenue<br>Glen Ridge, NJ 07028 | Active |
|--|--------|

|  |   |
|--|---|
| University Medicine Dentistry of N.J.<br>150 Bergen Street<br>Newark, NJ 07102 | Clinical Faculty Instructor of<br>Podiatric Surgery<br>(1992- 2001) |
|--|---|

**Practice History**

|   |                 |
|---|-----------------|
| Dr James C. Totten DPM<br>40 Ferry Street<br>Newark, NJ 07105 | 1988 to Present |
|---|-----------------|

RUPRECHT, HART & WEEKS, LLP  
306 Main Street  
Millburn, New Jersey 07041  
(973) 379-2400  
Attorney for Defendant, James C. Totten, DPM

KATHLEEN O'NEILL and MICHAEL  
O'NEILL, her husband,

Plaintiff,

v.

JAMES C. TOTTON, DPM, PATRICIA  
BERRAN, DPM, CLAUDIO GOMEZ,  
DPM, individually or as agents,  
servants and/or employees of  
SAINT BARNABAS AMBULATORY CARE  
CENTER; GRAMEDICA, LLC; and/or  
GRAMEDICA, LLC; and/or  
GRAMEDICA FOOT CARE SOLUTIONS;  
DRS. JOHN and/or JANE DOES (1-  
5); ABC MEDICAL GROUP(S); ABC  
CORPS. (1-5) and/or ASSOCIATES  
(1-5) (all fictitious names),

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No. ESX-L-3577-10

Civil Action

**ORDER DISMISSING PLAINTIFF'S  
COMPLAINT FOR FAILURE  
TO PROVIDE AN APPROPRIATE  
AFFIDAVIT OF MERIT**

This matter having been brought before the Court by Ruprecht, Hart & Weeks, LLP, attorneys for defendant, James C. Totten, DPM, for an Order dismissing plaintiff's Complaint for failure to provide an appropriate Affidavit of Merit, and the Court having considered this matter, and for good cause shown;

It is on this \_\_\_\_\_ day of \_\_\_\_\_, 2011

ORDERED that plaintiff's Complaint and any and all crossclaims against defendant, James C. Totten, DPM, be and hereby is dismissed for failure to provide an appropriate Affidavit of Merit; and it is further